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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

PERVAIZ A. CHAUDHRY, M.D., et al.,  
Plaintiffs,  
v.  
SONIA ANGELL, et al.,  
Defendants.

Case No. 1:16-cv-01243-SAB

ORDER GRANTING NONPARTY CRMC'S  
MOTION TO QUASH TRIAL SUBPOENA  
(ECF No. 153)

**I.**

**INTRODUCTION**

Currently before the Court is nonparty Fresno Community Hospital and Medical Center, dba Community Regional Medical Center's ("CRMC") motion to quash the trial subpoena served by Plaintiffs Pervaiz Chaudhry and Valley Cardiac Surgery Medical Group ("Plaintiffs"). The Court heard oral argument on motion to quash on April 28, 2021 via Zoom videoconference. Having considered the moving and opposition papers, arguments presented at the April 28, 2021 hearing, as well as the Court's file, the Court issues the following order granting nonparty CRMC's motion to quash the trial subpoena.

**II.**

**BACKGROUND**

Plaintiff Chaudhry, a cardiothoracic surgeon, performed open heart surgery April 2,

1 2012, on a patient, Mr. Perez, who went into cardiac arrest and suffered hypoxic brain injury.  
2 On April 11, 2020, the California Department of Public Health (“CDPH”) received an  
3 anonymous complaint alleging that Plaintiff Chaudhry left the operating room while the patient’s  
4 chest was still open and left the hospital before the surgery was completed. Around April 16-19,  
5 2012, the CDPH began an investigation into the anonymous complaint. As a result of the  
6 investigation, CDPH prepared a statement of deficiencies and plan of correction dated August  
7 23, 2012. The statement of deficiencies found that Plaintiff Chaudhry left the operating room at  
8 11:45 a.m. and that his physician assistant and Dr. Dhillion, the assistant surgeon, sutured the  
9 chest closed at approximately 12:00 p.m. and then left the operating room. The report found that  
10 Plaintiff Chaudhry left the open heart surgery prior to the closing of the chest and prior to  
11 stabilization in violation of hospital medical staff bylaws. The report further found that the  
12 hospital failed to ensure that quality medical care was provided to patients and failed to ensure  
13 that medical staff bylaws and regulations were enforced when Plaintiff Chaudhry left the open  
14 heart surgery prior to closure of the chest. The report was amended on November 25, 2014, to  
15 state that Plaintiff Chaudhry left the operating room at about 12:15 p.m.<sup>1</sup>

16 On June 17, 2016, Plaintiffs Chaudhry and Valley Cardiac Surgery Medical Group filed a  
17 complaint in Fresno County Superior Court. (ECF No. 1 at 10-30.) On August 19, 2016,  
18 Defendants Karen Smith,<sup>2</sup> Steven Lopez, Eric Creer, Shirley Campbell, and Deidre Kappmeyer  
19 removed the action to the Eastern District of California. (ECF No. 1.) Following summary  
20 judgment, this action is proceeding against Sonia Angell<sup>3</sup> in her official capacity, Steven Lopez  
21 in his individual capacity, and Shirley Campbell in her individual capacity (“Defendants”) on  
22 allegations of violations of due process.<sup>4</sup> (ECF Nos. 56, 60).

23 On September 21, 2020, the pretrial conference was held and discovery was reopened for  
24 the limited purpose of obtaining documents from CRMC. (ECF No. 114.) On October 5, 2020,

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25 <sup>1</sup> The facts are taken from the undisputed facts listed in the pretrial order. (ECF No. 88 at 2-6.)

26 <sup>2</sup> Karen Smith was named as a defendant for the purposes of obtaining injunctive and declaratory relief.

27 <sup>3</sup> On March 18, 2020, Sonia Angell was substituted for Karen Smith. (ECF No. 101.)

28 <sup>4</sup> Defendant Kappmeyer has been terminated from this action at the stipulation of the parties. (ECF Nos. 59, 60.)

1 Defendants served a notice to the consumer, Mr. Perez, and a subpoena to produce documents on  
2 CRMC. (ECF No. 118 at 14-20.) On this same date, Mr. Perez notified defense counsel that he  
3 had no objection to the subpoena. (Id. at 38.) On October 22, 2020, CRMC served objections to  
4 the subpoena. (Id. at 22-24.) On October 27, 2020, CRMC served a privilege log. (Id. at 27-  
5 33.)

6 On November 4, 2020, Defendants filed a motion to compel CRMC's compliance with  
7 the subpoena. (ECF No. 117.) An amended motion to compel was filed on November 5, 2020.  
8 (ECF No. 118.) Following briefing and a hearing on the matter, on December 7, 2020, the Court  
9 granted in part and denied in part Defendants' motion to compel. (ECF No. 122.)

10 On April 23, 2021, Plaintiffs filed an *ex parte* application for an order to show cause why  
11 a contempt sanction should not issue for the alleged failure of nonparty CRMC to comply with  
12 the December 7, 2020 order on the motion to compel and associated subpoena. (ECF No. 151.)  
13 The Court set the application for a hearing on shortened time, setting the matter to be heard on  
14 April 28, 2021. (ECF No. 152.)

15 On April 26, 2021, CRMC filed a motion to quash a trial subpoena, or in the alternative,  
16 an *ex parte* application to hear the motion on shortened time. (ECF No. 153.) On April 27,  
17 2021, the Court granted the application to hear the motion on shortened time, and set the hearing  
18 on CRMC's motion to quash to be heard concurrently on April 28, 2021, with Plaintiffs'  
19 application for an order to show cause. (ECF No. 163.)

20 The Court heard oral argument on both Plaintiffs' application and CRMC's motion to  
21 quash, on April 28, 2021 via Zoom videoconference.<sup>5</sup> Counsel H. Ty Kharazi and Thornton  
22 Davidson appeared by video on behalf of Plaintiffs Pervaiz Chaudhry and Valley Cardiac  
23 Surgery Medical Group. Counsel Diana Esquivel appeared by telephone on behalf of  
24 Defendants. Counsel Karen Ray appeared by video for nonparty CRMC.

25 \_\_\_\_\_  
26 <sup>5</sup> While the Court issues separate orders for purposes of clarity as to Plaintiffs' *ex parte* application and CRMC's  
27 motion to quash, the Court notes the discussion at the hearing pertained to both the application and motion, and  
28 indeed, Plaintiffs' opposition to the motion to quash was also offered as a filing of "additional support" for their *ex parte*  
application for an order to show cause. (See ECF No. 165 at 1.) Some of the Court's discussion in the  
forthcoming order adjudicating Plaintiffs' *ex parte* application may be relevant to this order, and vice versa, and  
thus, the Court incorporates the discussion therein here, and vice versa.

1 **III.**

2 **LEGAL STANDARD**

3 Rule 45 of the Federal Rules of Civil Procedure authorizes the issuance of a subpoena to  
4 command a nonparty to “produce designated documents, electronically stored information, or  
5 tangible things in that person’s possession, custody, or control. . . .” Fed. R. Civ. P.  
6 45(a)(1)(A)(iii). In response to the subpoena, the nonparty must serve objections to the request  
7 before the earlier of the time specified for compliance or fourteen days after the subpoena is  
8 served. Fed. R. Civ. P. 45(d)(2)(B.) If an objection is made, the serving party may move for an  
9 order compelling compliance in the court for the district where compliance is required. Fed. R.  
10 Civ. P. 45(b)(1)(B(i).

11 It is well settled that the scope of discovery under a subpoena is the same as the scope of  
12 discovery under Rule 26(b) and 34. Goodyear Tire & Rubber Co. v. Kirk’s Tire & Auto Service  
13 Center, 211 F.R.D. 648, 662 (D. Kan. 2003) (quoting Advisory Committee Note to the 1970  
14 Amendment of Rule 45(d)(1) that the amendments “make it clear that the scope of discovery  
15 through a subpoena is the same as that applicable to Rule 34 and the other discovery rules.”).  
16 Rule 34(a) provides that a party may serve a request that is within the scope of Rule 26. Under  
17 the Federal Rule of Civil Procedure 26:

18 Parties may obtain discovery regarding any nonprivileged matter that is relevant  
19 to any party’s claim or defense and proportional to the needs of the case,  
20 considering the importance of the issues at stake in the action, the amount in  
21 controversy, the parties’ relative access to relevant information, the parties’  
22 resources, the importance of the discovery in resolving the issues, and whether the  
burden or expense of the proposed discovery outweighs its likely benefit.  
Information within this scope of discovery need not be admissible in evidence to  
be discoverable.

23 Fed. R. Civ. P. 26(b)(1).

24 Relevancy is broadly defined to encompass any matter that bears on, or that reasonably  
25 could lead to other matter that could bear on, any issue that is or may be in the case.  
26 Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Although relevance is broadly  
27 defined, it does have “ultimate and necessary boundaries.” Gonzales v. Google, Inc., 234 F.R.D.  
28 674, 680 (N.D. Cal. 2006) (quoting Oppenheimer Fund, Inc., 437 U.S. at 351). While discovery

1 should not be unnecessarily restricted, discovery is more limited to protect third parties from  
2 harassment, inconvenience, or disclosure of confidential documents. Dart Industries Co., Inc. v.  
3 Westwood Chemical Co., Inc., 649 F.2d 646, 649 (9th Cir. 1980). In deciding discovery  
4 disputes, courts must be careful not to deprive the party of discovery that is reasonably necessary  
5 to their case. Dart Industries Co., Inc., 649 F.2d at 680. “Thus, a court determining the propriety  
6 of a subpoena balances the relevance of the discovery sought, the requesting party’s need, and  
7 the potential hardship to the party subject to the subpoena.” Gonzales, 234 F.R.D. at 680.

8 Rule 45(d)(3)(A) sets forth the bases for a court to quash or modify a subpoena, which  
9 provides, in pertinent part, that “[o]n timely motion, the court for the district where compliance is  
10 required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; . .  
11 . or (iv) subjects a person to undue burden. Fed. R. Civ. P. 45(d)(3)(A); see also Fed. R. Civ. P.  
12 45(d)(1) (“A party or attorney responsible for issuing and serving a subpoena must take  
13 reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena  
14 [and] [t]he court for the district where compliance is required must enforce this duty and impose  
15 an appropriate sanction--which may include lost earnings and reasonable attorney’s fees--on a  
16 party or attorney who fails to comply.”).

17 “Although irrelevance is not among the litany of enumerated reasons for quashing a  
18 subpoena found in Rule 45, courts have incorporated relevance as a factor when determining  
19 motions to quash a subpoena.” Moon, 232 F.R.D. at 637 (citing Goodyear Tire & Rubber Co. v.  
20 Kirk’s Tire & Auto Servicenter, 211 F.R.D. 658, 662 (D. Kan. 2003)). Thus, in determining  
21 undue burden, the Court should weigh the burden of the subpoenaed party against the requested  
22 information’s relevance, need of the serving party for the information, the breadth of the  
23 information requested, the time period covered by the request, and the particularity with which  
24 the request is made. Moon, 232 F.R.D. at 637.

#### 25 IV.

#### 26 DISCUSSION

27 Nonparty CRMC filed this motion seeking to quash a document and trial subpoena issued  
28 to the Custodian of Records for CRMC on April 22, 2021. (CRMC’s *Ex Parte* Mot. Quash

1 Subpoena (“Mot.”) 2, ECF No. 153.) The date of compliance for the subpoena is the start of the  
2 trial in this action, May 4, 2021. CRMC requested an order shortening time for a hearing on the  
3 basis the subpoena failed to allow a reasonable time to comply with the large and burdensome  
4 document demand, and the trial date left no time for a regularly notice motion.

5 As the proffered reasons to quash, CRMC first argues the subpoena was not properly  
6 served on CRMC because the subpoena was not accompanied by a witness fee and a mileage  
7 allowance as required by law. (Mot. 2; Decl. Karen Ray Supp. *Ex Parte* Mot. Quash (“Ray  
8 Decl.”) ¶ 5, ECF No. 153-1; Ex. A, ECF No. 153-1 at 6.) Further, in the event Plaintiffs re-serve  
9 the subpoena with the procedural corrections, CRMC argues a motion to quash is still proper to  
10 be considered prior to the trial as CRMC argues there would be even less time to comply with  
11 the document demand; Plaintiffs’ subpoena seeks documents and ESI that is not reasonably  
12 accessible due to undue burden and costs; and the subpoena fails to allow a reasonable time to  
13 comply. (Mot. 2.) CRMC also highlights the subpoena seeks a privilege log of all unproduced  
14 documents related to CRMC’s January 4, 2021 production and an *in camera* review of privileged  
15 documents; seeks documents which are presumably in the custody of the California Department  
16 of Public Health (“CDPH”); and seeks ESI in the form of texts and emails. (Mot. 3.)

17 **A. Failure to Provide Witness Fees or Reasonable Mileage Costs**

18 CRMC argues the subpoena is invalid because it was not accompanied by witness fees  
19 for one day’s attendance and reasonable mileage. Fed. R. Civ. P. 45(b)(1). CRMC argues the  
20 failure to simultaneously tender witness fees invalidates the service, CF & I Steel Corp. v. Mitsui  
21 & Co. (U.S.A.), 713 F.2d 494, 496 (9th Cir. 1983); In re Dennis, 330 F.3d 696, 704–05 (5th Cir.  
22 2003). (Mot. 4.)

23 The Court agrees that service was invalid in this instance. Plaintiffs offered no direct  
24 response to this argument, nor any competing caselaw to counter the clear discussion in the cases  
25 proffered by CRMC. See CF & I Steel Corp., 713 F.2d at 496 (upholding court’s granting of  
26 motion to quash subpoena on basis of invalid service due to no tendering of witness and mileage  
27 fees, stating “[t]he language is clear and the interpretation adopted by the district court is  
28 supported by widely accepted treatises on civil procedure,” and therefore holding the plain

1 meaning the rule “requires simultaneous tendering of witness fees and the reasonably estimated  
2 mileage allowed by law with service of a subpoena.”); In re Dennis, 330 F.3d at 704 (“The  
3 conjunctive form of the rule indicates that proper service requires not only personal delivery of  
4 the subpoena, but also tendering of the witness fee and a reasonable mileage allowance . . .  
5 [a]ccordingly, the subpoena was not properly served.”); see also Amtrust N. Am., Inc. v.  
6 Safebuilt Ins. Servs., Inc., No. 2:16-MC-0145 KJM AC, 2016 WL 5469257, at \*1 (E.D. Cal.  
7 Sept. 29, 2016) (noting “it appears that more generally, the court can quash the subpoena if it is  
8 invalid or procedurally defective,” and that while “CF & I Steel was decided long before the  
9 1991 amendments to the rules that added the specific grounds for quashing subpoenas . . . those  
10 amendments do not ‘diminish’ the rights of witnesses [but] [r]ather, the notes to the amendments  
11 indicate that they further protect witnesses [and] [t]herefore, even though ‘invalidity’ and  
12 ‘procedural defect’ are not listed as grounds for quashing subpoenas, they are still valid grounds  
13 for doing so.”); BNSF Ry. Co. v. Alere, Inc., No. 18-CV-291-BEN-WVG, 2018 WL 2267144, at  
14 \*6 (S.D. Cal. May 17, 2018) (“It is well settled that a witness fee must be tendered concurrently  
15 with the service of a subpoena . . . [t]hus, unless Respondent waived the requisite tendering of a  
16 witness fee or failed to properly object to the absence of such a fee, service of the subpoena was  
17 defective.”).

18           Accordingly, the Court finds the subpoena was improperly served, and the Court shall  
19 grant nonparty CRMC’s motion to quash on that ground. The Court now turns to consideration  
20 of the issues presented regarding the reasonableness of the time to respond, and burden of  
21 complying with the subpoena, particularly if Plaintiffs re-serve the subpoena with even less time  
22 to comply.

23           **B.       Whether the Subpoena Fails to Allow Reasonable Time to Comply and is**  
24           **Unduly Burdensome**

25           CRMC argues that even if Plaintiffs re-serve the subpoena, hearing the motion to quash is  
26 necessary because there would be even less time to comply with the document production, and  
27 while Rule 45 does not define a specific reasonable time, a response time of less than one week  
28 is not reasonable, particularly for such a large and burdensome document production. The Court

1 turns to CRMC’s specific arguments.

2 1. CRMC’s Arguments Regarding ESI Demand

3 The ESI demand of the subpoena for text messages and emails requests: “Any and all  
4 correspondence, e-mail, text messages, between CDPH and CRMC in connection with  
5 Complaint No. CA00306344, concerning the April 2, 2012 operation of Silvano Perez.” (Ray  
6 Decl. ¶ 5, Ex. A, ECF No. 153-1 at 8.)

7 CRMC argues the ESI is not reasonably accessible due to undue burden and cost, and  
8 specifically: the information sought is nine (9) years old and the emails are archived needing to  
9 be exported to a readable format; a data search cannot be run until the data is exported; the  
10 subpoena does not identify individual persons in the description of ESI but only identifies the  
11 entities CDPH and CRMC, which complicates the search as there are thousands of employees  
12 and hospital affiliated email accounts; after exportation a quality search would have to be run;  
13 and last, data will have to be uploaded for accessibility. (Ray Decl. ¶ 9.) CRMC argues this is  
14 an unfeasible task due to the short period of time; there was no reason the subpoena could not  
15 have been issued earlier for this ESI when discovery was open and would allow for the IT  
16 department to perform a search, and is thus unreasonable, oppressive, costly, and burdensome.  
17 (Mot. 5.)

18 2. CRMC’s Arguments Regarding CDPH Documents

19 The subpoena seeks “[a]ny and all documents, regarding Statement of Deficiencies and  
20 Plan of Correction (State 2567) Complaint No. CA00306344, concerning the April 2, 2012  
21 operation of Silvano Perez, including all iterations of the plans of correction submitted to CDPH,  
22 whether accepted, rejected or asked for clarification and/or revision.” (Ray Decl. ¶ 5, Ex. A,  
23 ECF No. 153-1 at 8.)

24 CRMC argues these documents are in the custody of CDPH, a party to the action. (Mot.  
25 6.) CRMC argues the issuing of a subpoena on the eve of trial to a nonparty witness for  
26 information available from a party during discovery, is unreasonable, and the subpoena  
27 additionally does not allow for reasonable time to comply with the demand. (Mot. 6.)

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1           3.       CRMC’s Arguments Regarding Privilege Log and *In Camera* Request

2           The subpoena seeks “[a]ny and all Peer review documents of Dr. Pervaiz Chaudhry,  
3 M.D. including a privilege log of all un-protected documents in connection with the April 2,  
4 2012 operation of patient Silvino Perez [and] all privileged documents be available for an in  
5 camera review.” (Ray Decl. ¶ 5, Ex. A, ECF No. 153-1 at 8.)

6           CRMC argues the request is unwarranted because it complied with the Court’s December  
7 7, 2020 order and produced all responsive peer review documents on January 4, 2021. (Mot .6;  
8 Ray Decl. ¶ 10.) Two weeks later, on January 20, 2021, CRMC’s counsel received an email  
9 from Plaintiffs’ counsel H. Ty Kharazi, claiming the production was incomplete and demanding  
10 verification of the responses by January 22, 2021, or he would seek sanctions and forensic  
11 examination of CRMC’s compute files. (Mot. 6; Ray Decl. ¶ 10.) CRMC’s counsel called  
12 Counsel Kharazi the same day, January 20, 2021, and CRMC’s counsel proffers that Kharazi  
13 represented there were “about 12 pages” of documents missing, but refused to give Ms. Ray any  
14 further description. Ms. Ray asked for Mr. Kharazi to provide the documents so she could give  
15 them to CRMC, but alleges he refused. (Mot. 6-7; Ray Decl. ¶ 10.)

16           The same day, January 20, 2021, Ms. Ray contacted CRMC asking to perform another  
17 search based on Mr. Kharazi’s description to make sure no documents were inadvertently  
18 omitted, and two days later, on January 22, 2021, CRMC’s counsel emailed Mr. Kharazi and  
19 informed him CRMC was performing another search. Ms. Ray again asked Mr. Kharazi to send  
20 the documents, but he again he did not. (*Id.*) On February 9, 2021, Mr. Kharazi emailed Ms.  
21 Ray his list of documents, described as follows: (1) Statement from Diane Carlson; (2) IRS  
22 Entries; (3) Statement and emails from Erin McCurley; (4) Print out of Peer Review Database;  
23 (5) Communications from Toni Snyder; (6) Statement to CDPH by the “Surveyor.”; (7)  
24 Statement by McComb to the Surveyor; (8) Interviews with Denise Currey and Mary Lopez; and  
25 (9) Letter from CMS to start the inquiry. (Mot. 7; Ray Decl. ¶ 12, Ex. E.)

26           Following another search by the hospital, CRMC determined there were no other  
27 documents to be produced, and specifically: No. 9 had already been produced; it was unclear  
28 what No. 4 was; and as for Nos. 1-3 and 5-8, there were no documents matching this description

1 in the peer review file. (Mot. 7; Ray Decl. ¶ 12.) CRMC proffers that documents 1-3, and 5-8,  
2 appeared to pertain to the hospital's risk management and involvement with the CDPH  
3 investigation, and not the Peer Review investigation of Dr. Chaudhry, which are completely  
4 different files. (Id.) Specifically, Risk Management has an electronic file system overseen by  
5 the hospital's legal department, whereas Peer Review keeps its own files on its physicians.  
6 Accordingly, on March 2, 2021, Ms. Ray emailed the parties a copy of the Declaration  
7 Certifying Peer Review Records, signed by Laura McComb.

8         Thereafter, between March 2, 2021, and April 22, 2021, CRMC's counsel did not hear  
9 anything from Plaintiffs' counsel regarding the document production, until receiving a letter at  
10 the close of business from Plaintiffs' counsel informing her that he would asking the Court on  
11 April 23, 2021 for intervention regarding concerns with the privilege log. (Mot. 8.)

12         CRMC proffers the peer review file relating to Dr. Chaudhry is extensive, contains  
13 hundreds, if not thousands of pages of peer review documents unrelated to Perez's surgery, and  
14 not only contains information pertaining to patient incidents but also professional conduct,  
15 behavior, privileges, reappointments, ongoing professional practice evaluations, rate incidences,  
16 surgical outcome statistics, and other things. (Mot. 8; Ray Decl. ¶ 14.) Therefore, the Bates  
17 numbering on the privilege log reflects the page count for Dr. Chaudhry's entire peer review file,  
18 and only a portion pertains to Perez's surgery.

19         CRMC argues these documents were not produced because it was agreed that none of this  
20 information would be disclosed and after the Court's December 7, 2020 order, CRMC produced  
21 the responsive documents only pertaining to Mr. Perez's surgery. (Id.) CRMC emphasizes that  
22 Plaintiff has had approximately two months since CRMC served counsel with the Certification  
23 of Records Declaration to raise the issue with CRMC's document production based on its  
24 privilege log, but instead, waited until a week before trial to serve a subpoena requesting CRMC  
25 produce another privilege log of unproduced documents and undergo an *in camera* review.

26         CRMC argues this is unreasonable, and Fed. R. Civ. P. 45 makes it clear that subpoenas  
27 are not to be used as tools for abuse, especially on a non-party.

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1           4.     Plaintiff's Arguments in Opposition

2           Plaintiffs frame the Court's December 7, 2020 order as expressly ordering CRMC to  
3 produce the entire peer review file, with the exception of documents protected by the attorney-  
4 client privilege. (Pls. Opp'n Mot. Quash ("Opp'n") 3, ECF No. 165.) Plaintiffs proffer that  
5 while CRMC claims to have produced the entire set of responsive documents by January 4,  
6 2021, they did not provide a certification that all records were produced, and thereafter, the  
7 parties engaged in "back and forth sparring for months over the completeness of the records  
8 produced." Plaintiffs argue CRMC is attempting to shift the attention away from its own non-  
9 compliance by focusing on whether Plaintiffs timely presented the issues of completeness of  
10 production. (Opp'n 3-4.)

11           Plaintiffs state that if there is not enough time now to produce ESI from 2012, there *was*  
12 enough time in November of 2020 when they filed the opposition to the subpoena, and in  
13 December of 2020, however CRMC never asked the Court to reconsider its order. Plaintiffs  
14 argue CRMC should have argued burden previously in their opposition to the motion to compel,  
15 but instead focused all their attention on claims of privilege, and the Court may only consider  
16 untimely objections in unusual circumstances that do not apply here. (Opp'n 4.)

17           Plaintiffs argue CRMC has given no credible response to the discrepancy in the Bates  
18 numbering of files produced, and marked in the privilege log cited by Plaintiffs' counsel in the  
19 April 22, 2021 letter; have given no credible explanation for the long delay in obtaining a  
20 certification that all responsive peer review records have been produced; and failed to explain  
21 why it did not raise its current Rule 45 objections in a timely way in November and December of  
22 2020 so as to not prejudice Plaintiffs access to important evidence. (Opp'n 5.)

23           As for CRMC's argument that the Peer Review File contains numerous records relating  
24 to medical cases other than the Perez matter, Plaintiffs contend this argument fails because  
25 CRMC already asserted those same objections in its opposition to the motion to compel, and  
26 Plaintiffs argue the Court's order overruled all other objections except those related to attorney-  
27 client privilege, and CRMC is not entitled to rewrite the December 7, 2020 order. (Opp'n 5.)

28     ///

1           5.       The Court Declines to Address Substance of Subpoena as Service was Invalid

2           The Court has already determined that the subpoena issued by Plaintiffs is procedurally  
3 invalid because the subpoena was not accompanied by witness fees or costs for reasonable  
4 mileage, and thus the subpoena shall be quashed on such grounds. Accordingly, the Court  
5 declines to make an express ruling as to the content of the subpoena as it was currently presented  
6 to the Court. Nonetheless, given the matters discussed at the hearing pertaining to both  
7 Plaintiffs' application for an order to show cause, and nonparty CRMC's motion to quash, the  
8 Court will make some observations, and highlight Plaintiffs' concession made at the hearing.

9           Plaintiffs may be wise to consider the scope of the subpoena originally issued by  
10 Defendants, as then narrowed through meet and confer and the motion to compel process, in  
11 comparison to the requests contained in the trial subpoena issued by Plaintiffs before the Court  
12 here.<sup>6</sup> Maintaining congruity between the initial subpoena request by Defendants, as previously  
13 narrowed, would lend toward a finding that a trial subpoena issued with a small time frame to  
14 comply, is reasonable, particularly if only requesting documents already required to be produced  
15 by the nonparty CRMC. It appears that the trial subpoena is seeking documents that were not  
16 part of the subpoena as narrowed, or ordered to be produced by the Court on December 7, 2020.  
17 (See ECF No. 153-1 at 8 (“all Peer Review documents of Dr. Pervis [sic] Chaudhry . . . including  
18 a privilege log of all un-produced documents in connection with the April 2, 2012 operation of  
19 patient Silvano Perez”)<sup>7</sup>; ECF No. 122 at 25 (“Here, the information that Defendants are seeking  
20 in the peer review files only applies to the April 2, 2012 surgery by Plaintiff Chaudhry on Mr.  
21 Perez.”). ) In this regard, at the hearing held on April 28, 2021, counsel for Plaintiffs stated they  
22 would concede that the additional documents that were requested in the trial subpoena do not  
23 need to be produced as long as Plaintiffs received “the rest of the MEC file and the  
24 correspondence between the State and the MEC committee, which [Plaintiffs] think should have  
25 been part of the production.”

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26 <sup>6</sup> The Court discusses this issue and related disputes in greater detail in the forthcoming order on Plaintiffs'  
27 application for an order to show cause.

28 <sup>7</sup> While the request uses the language of “including” the more narrow category pertaining to Perez, the request  
references all peer review documents pertaining to Plaintiff Chaudhry. (ECF No. 153-1 at 8.)

V.

**CONCLUSION AND ORDER**

Based on the foregoing, it is HEREBY ORDERED that nonparty Fresno Community Hospital and Medical Center, dba Community Regional Medical Center's motion to quash the trial subpoena served by Plaintiffs Pervaiz Chaudhry and Valley Cardiac Surgery Medical Group (ECF No. 153), is GRANTED.

IT IS SO ORDERED.

Dated: April 28, 2021



UNITED STATES MAGISTRATE JUDGE

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